

1133279-0028

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Gary J. Becker
Serial No. : 09/511,481
Filed : 23 February 2000
Title : EXPANDABLE INTRALUMINAL
ENDOPROSTHESIS
Examiner : Chattopadhyay, Urmi
Group Art Unit : 3738

#12
Election
S. Bryce
9/26/02

CERTIFICATE OF TRANSMISSION UNDER 37 C.F.R. §1.8	
I hereby certify that this paper is being facsimile transmitted to the United States Patent and Trademark Office on September 24, 2002 at the facsimile number <u>703-305-3590</u> .	
John M. Genova	32,224
Agent Name	PTO Reg. No.
<i>John M. Genova</i>	24 Sept 2002
Signature	Date of Signature

FAX RECEIVED

SEP 24 2002

GROUP 3700

Assistant Commissioner for Patents
Washington, D.C. 20231

ATTENTION: Examiner U. Chattopadhyay

FACSIMILE NO: 703-305-3590

DATE: September 24, 2002

PAGES: (including cover sheet) **4**

RESPONSE TO RESTRICTION REQUIREMENT

Sir:

The Restriction Requirement of record was made final in the Office Action mailed
August 27, 2002. The elected species is the invention of Group I comprising Figures 1, 2 and 4

and the elected subspecies is the connection element of Figure 3A. Applicant's response to the restriction requirement, filed June 17, 2002, was considered to be non-responsive because Applicant did not identify the claims which are readable on the elected species and subspecies.

Based on a good faith review of the claims in view of the specification, including the figures, Applicant submits that all of pending claims 21-70 read on the elected species and subspecies.

Specifically, as noted by the Examiner and the specification, the respective embodiments of Group I and Group II differ in the number or kinds of connection elements (page 14, lines 13-14; and the paragraph bridging pages 16-17). Figure 1 of Group I shows the use of two types of connection elements 31 and 32 while Figure 5 of Group II shows the use of only one connection element 33. However, as expressly disclosed in the specification at page 15, lines 4-15, "the invention imposes hardly no limitation of the design of any part of the device including the shape of the interconnection elements". Accordingly, Figures 3A-3G are illustrations of possible shapes which could be used in the claimed invention. As such, Figures 3A-3G are not intended to be limiting in the sense of defining a species or subspecies of the claimed invention. Accordingly, Applicant submits that all of pending claims 21-70 read on the elected species and subspecies.

Furthermore, an examination of the connection elements 3A-3G when considered in view of the specification at page 15, lines 4-15, indicates that strut (3) of the connection element of Figure 3A-3G changes gradually from a straight shape to a S-curved shape. The connection elements of Figures 3A-3C comprise a straight strut (3) whereas the main strut (3) of the connection elements in Figures 3D-3F has a S-curved shape. Although Applicant disagrees with the subspecies requirement in its entirety, the incongruity and inequity of the designation of

seven subspecies is demonstrated by the disclosure of two types of connection elements: connection elements having a straight or S-shaped strut.

Therefore, Applicant maintains that the restriction requirement with respect to the election of a species and subspecies on the basis of the number and shape of the connection elements is improper and contrary to the disclosure of the specification. The embodiments of Group I and Group II are directed to the same invention as defined by the recited features of the claims. Accordingly, an examination of the invention, as defined by the claims, will encompass the species of Groups I and II and the subspecies 3A-G. As such, there is no undue burden on the Examiner to examine both species in the present application. Thus, in the interests of economy on behalf of the Patent Office and the Applicant, the Examiner is respectfully requested to reconsider and withdraw the restriction requirement as to Groups I and II, and to search and examine the invention as illustrated by Figures 1-7 in the same application.